

FCC General Auction Rules

APPENDIX B

FINAL RULES

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: Secs. 1, 4(i), 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 151, 154, and 303, unless otherwise noted.

2. Part 1 is amended by adding a new subpart (Q) to read as follows:

Subpart Q - Competitive Bidding Proceedings

AUTHORITY: 47 U.S.C. 309(j).

GENERAL PROCEDURES

§ 1.2101 Purpose

The provisions of this subpart implement Section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), authorizing the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for certain initial licenses.

§ 1.2102 Eligibility of Applications for Competitive Bidding

(a) Mutually exclusive initial applications in the following services or classes of services are subject to competitive bidding:

- (1) Interactive Video Data Service (see 47 C.F.R. Part 95, Subpart F);
- (2) Marine Public Coast Stations (see 47 C.F.R. Part 80, Subpart J);
- (3) Multipoint Distribution Service and Multichannel Multipoint Distribution Service (see 47 C.F.R. Part 21, Subpart K). This subsection does not apply to applications in these services that were filed prior to July 26, 1993;
- (4) Exclusive Private Carrier Paging above 900 MHz (see 47 C.F.R. Part 90, Subpart P and the Private Carrier Paging Exclusivity Report and Order, 8 FCC Rcd 8318 (1993));
- (5) Public Mobile Services (see 47 C.F.R. Part 22), except in the 800 MHz

Air-Ground Radiotelephone Service, and in the Rural Radio Service. This subsection does not apply to certain applications in the cellular radio service that were filed prior to July 26, 1993;

(6) Specialized Mobile Radio Service (SMR) (see 47 C.F.R. Part 90, Subpart S) including finder's preference requests for frequencies allocated to the SMR service (see 47 C.F.R. Section 90.173); and

(7) Personal Communications Services (PCS) (see 47 C.F.R. Part 24).

NOTE: To determine the rules that apply to competitive bidding in the foregoing services, specific service rules should also be consulted.

(b) The following types of license applications are not subject to competitive bidding procedures:

(1) Applications for renewal of licenses;

(2) Applications for modification of license; provided, however, that the Commission may determine in particular instances that applications for modification that are mutually exclusive with other applications should be subject to competitive bidding;

(3) Applications for subsidiary communications services. A "subsidiary communications service" is a class of service where the signal for that service is indivisible from that of the main channel signal and that main channel signal is exempt from competitive bidding under other provisions of these rules. See, e.g., § 1.2102(c) (exempting broadcast services). Examples of such subsidiary communications services are those transmitted on subcarriers within the FM baseband signal (see 47 C.F.R. § 73.295), and signals transmitted within the Vertical Blanking Interval of a broadcast television signal; and

(4) Applications for frequencies used as an intermediate link or links in the provision of a continuous, end-to-end service where no service is provided directly to subscribers over the frequencies. Examples of such intermediate links are (a) point-to-point microwave facilities used to connect a cellular radio telephone base station with a cellular radio telephone mobile telephone switching office and (b) point-to-point microwave facilities used as part of the service offering in the provision of telephone exchange or interexchange service.

(c) Applications in the following services or classes of services are not subject to competitive bidding:

(1) Alaska-Private Fixed Stations (see 47 C.F.R. Part 80, Subpart O);

- (2) Broadcast radio (AM and FM) and broadcast television (VHF, UHF, LPTV) under 47 C.F.R. Part 73;
- (3) Broadcast Auxiliary and Cable Television Relay Services (see 47 C.F.R. Part 74, Subparts D, E, F, G, H and L and Part 78, Subpart B);
- (4) Instructional Television Fixed Service (see 47 C.F.R. Part 74, Subpart I);
- (5) Maritime Support Stations (see 47 C.F.R. Part 80, Subpart N);
- (6) Marine Operational Fixed Stations (see 47 C.F.R. Part 80, Subpart L);
- (7) Marine Radiodetermination Stations (see 47 C.F.R. Part 80, Subpart M);
- (8) Personal Radio Services (see 47 C.F.R. Part 95), except applications filed after July 26, 1993, in the Interactive Video Data Service (see 47 C.F.R. Part 95, Subpart F);
- (9) Public Safety, Industrial/Land Transportation, General and Business Radio categories above 800 MHz , including finder's preference requests for frequencies not allocated to the SMR service (see 47 C.F.R. Section 90.173), and including, until further notice of the Commission, the Automated Vehicle Monitoring Service (see 47 C.F.R. § 90.239);
- (10) Private Land Mobile Radio Services between 470-512 MHz (see 47 C.F.R. Part 90, Subparts B-F) including finder's preference requests, see 47 C.F.R. Section 90.173;
- (11) Private Land Mobile Radio Services below 470 MHz (see 47 C.F.R. Part 90, Subparts B-F) except in the 220 MHz band (see 47 C.F.R. Part 90, Subpart T), including finder's preference requests (see 47 C.F.R. Section 90.173); and
- (12) Private Operational Fixed Services (see 47 C.F.R. Part 94).

§ 1.2103 Competitive Bidding Design Options

(a) The Commission will select the competitive bidding design(s) to be used in auctioning particular licenses or classes of licenses on a service-specific basis. The choice of competitive bidding design will generally be made pursuant to the criteria set forth in the Second Report and Order in PP Docket No. 93-253, FCC 94-61, adopted March 8, 1994, but the Commission may design and test alternative methodologies. The Commission will choose from one or more of the following types of auction designs for services or classes of services subject to competitive bidding:

- (1) Single round sealed bid auctions (either sequential or simultaneous)
 - (2) Sequential oral auctions
 - (3) Simultaneous multiple round auctions
- (b) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses, in addition to bids on individual licenses. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction.
- (c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 1.2104 Competitive Bidding Mechanisms

- (a) Sequencing. The Commission will establish the sequence in which multiple licenses will be auctioned.
- (b) Grouping. In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.
- (c) Reservation Price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.
- (d) Minimum Bid Increments. The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.
- (e) Stopping Rules. The Commission may establish stopping rules before or during multiple round auctions in order to terminate the auctions within a reasonable time.
- (f) Activity Rules. The Commission may establish activity rules which require a minimum amount of bidding activity.
- (g) Withdrawal, Default and Disqualification Penalties. As specified below, when the Commission conducts a simultaneous multiple round auction pursuant to § 1.2103, the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.
- (1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid

during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in subsection (1) plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

When the Commission conducts single round sealed bid auctions or sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(h) Bidder identification during auctions. During any auction, the Commission may identify bidders and the bids only by bid numbers.

(i) The Commission may delay, suspend, or cancel an auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

§ 1.2105 Bidding Application and Certification Procedures; Prohibition of Collusion

(a) Submission of Short Form Application (FCC Form 175). In order to be eligible to bid, an applicant must timely submit a short-form application (FCC Form 175), together with any appropriate filing fee set forth by Public Notice. Unless otherwise provided by Public Notice, the Form 175 need not be accompanied by an upfront payment (see Section 1.2106 of this part).

(1) All Form 175s will be due:

(a) on the date(s) specified by Public Notice; or

(b) in the case of application filing dates which occur automatically by operation of law (see, e.g., 47 C.F.R. Section 22.902), on a date specified by Public Notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.

(2) The Form 175 must contain the following information:

- (i) Identification of each license on which the applicant wishes to bid;
- (ii) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons;
- (iii) The identity of the person(s) authorized to make or withdraw a bid;
- (iv) If the applicant applies as a designated entity pursuant to § 1.2110 of these rules, a statement to that effect and a declaration, under penalty of perjury, that the applicant is qualified as a designated entity under § 1.2110 of the Commission's Rules;
- (v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to Section 308(b) of the Communications Act of 1934, as amended;
- (vi) Certification that the applicant is in compliance with the foreign ownership provisions of Section 310 of the Communications Act of 1934, as amended;
- (vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;
- (viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures,

consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure. All such arrangements must have been entered into prior to the filing of Form 175 and no such arrangements may be entered into after the filing of Form 175 until after the winning bidder has made the required down payment;

(ix) Certification under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to subsection (viii) regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid;

NOTE: The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) Modification and Dismissal of Form 175.

(1) Any Form 175 that is not signed or otherwise does not contain all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to any applicable filing deadline. The application will be dismissed with prejudice and the upfront payment, if paid, will be returned.

(2) The Commission will provide bidders a limited opportunity to cure defects specified herein (except for failure to sign the application and to make certifications) and to resubmit a corrected application. Form 175 may be amended or modified to make minor changes or correct minor errors in the application (such as typographical errors). The Commission will classify all amendments as major or minor, pursuant to rules applicable to specific services. An application will be considered to be a newly filed application if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(3) Applicants who fail to correct defects in their applications in a timely manner as specified by Public Notice will have their applications dismissed with no opportunity for resubmission.

(c) Prohibition of Collusion. After the filing of short-form applications, all bidders are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders until after the high bidder makes the required down payment, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

§ 1.2106 Submission of Upfront Payments

- (a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. No interest will be paid on upfront payments. In auctions for licenses set aside pursuant to § 1.2110(c), the Commission may establish lower upfront payments for eligible designated entities.
- (b) Upfront payments must be made either by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.
- (c) If an upfront payment is not in compliance with the Commission's Rules, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.
- (d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder.
- (e) Notwithstanding the provisions of subsection (d), in the event a penalty is assessed pursuant to § 1.2104 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default penalty before being applied toward any additional payment obligations that the high bidder may have.

§ 1.2107 Submission of Down Payment and Filing of Long-Form Applications

- (a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.
- (b) Within five (5) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the "down payment") as are necessary to bring its total deposits (not including upfront payments applied to satisfy penalties) up to twenty (20) percent of its high bid(s). (In single round sealed bid auctions conducted under § 1.2103, however, bidders may be required to submit their down payments with their bids.) This down payment must be made by wire transfer or cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Winning bidders who are qualified designated entities

eligible for installment payments under § 1.2110(d) are only required to bring their total deposits up to ten (10) percent of their winning bid(s). Such designated entities must pay the remainder of the twenty (20) percent down payment within five (5) business days of grant of their application. See § 1.2110(e)(1) and (2) of this subpart. Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable penalties. No interest will be paid on any down payment.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder (unless it has already submitted such an application, as contemplated by § 1.2105(a)(1)(b)). For example, if the applicant is a high bidder for a license in the Interactive Video Data Service (see 47 C.F.R. Part 95, Subpart F), the long form application will be submitted on FCC Form 574 in accordance with Section 95.815 of the Rules. Notwithstanding any other provision in Title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Notwithstanding any other provision in Title 47 of the Code of Federal Regulations to the contrary, the high bidder's long-form application must be mailed or otherwise delivered to:

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554
Attention: Auction Application Processing Section

An applicant that fails to submit the required long-form application as required under this subsection, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the penalties set forth in § 1.2104 of the Commission's Rules.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to § 1.2105.

§ 1.2108 Procedures for Filing Petitions To Deny Against Long-Form Applications

(a) Where petitions to deny are otherwise provided for under the Act or the Commission's Rules, and unless other service-specific procedures for the filing of such petitions are provided

for elsewhere in the Commission's Rules, the procedures in this section shall apply to the filing of petitions to deny the long-form applications of winning bidders.

(b) Within thirty (30) days after the Commission gives public notice that a long-form application has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such opposition and replies will be those provided in § 1.45 of these Rules.

(d) If the Commission determines that:

(1) an applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application.

(2) an applicant is not qualified and that there is no substantial issue of fact concerning that determination, the Commission need not hold an evidentiary hearing and will deny the application.

(3) substantial and material issues of fact require a hearing, it will conduct a hearing. The Commission may permit all or part of the evidence to be submitted in written form and may permit employees other than administrative law judges to preside at the taking of written evidence. Such hearing will be conducted on an expedited basis.

§ 1.2109 License Grant, Denial, Default, and Disqualification

(a) Unless otherwise specified in these rules, auction winners are required to pay the balance of their winning bids in a lump sum within five (5) business days following award of the license. Grant of the license will be conditioned on full and timely payment of the winning bid.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default penalty specified in § 1.2104(g)(2). In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment obligations set forth in § 1.2107(b) will apply.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of

its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the penalty set forth in § 1.2104(g)(2). In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file applications for the license.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

§ 1.2110 Designated Entities

(a) Designated entities are small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies.

(b) Definitions.

(1) Small businesses. Unless otherwise provided in rules governing specific services, a small business is an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.

(2) Businesses owned by members of minority groups and/or women. A business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens have at least 50.1 percent equity ownership and 50.1 percent controlling interest in the applicant. For applicants that are limited partnerships, the general partner either must be a minority and/or woman (or minorities and/ women) who is a U.S. citizen and owns at least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

(3) Rural telephone companies. A rural telephone company is an independently owned and operated local exchange carrier with 50,000 access lines or fewer, and serving

communities with 10,000 or fewer inhabitants.

(c) The Commission may set aside specific licenses for which only eligible designated entities, as specified by the Commission, may bid.

(d) The Commission may permit small businesses, including small businesses owned by women and minorities and rural telephone companies that qualify as small businesses, that are high bidders for licenses specified by the Commission, to pay the full amount of their high bids in installments over the term of their licenses pursuant to the following:

(1) Unless otherwise specified, each eligible applicant paying for its license(s) on an installment basis must deposit by wire transfer or cashier's check in the manner specified in § 1.2107(b) sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within five (5) business days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(2) Within five (5) business days of the grant of the license application of a winning bidder eligible for installment payments, the licensee shall pay another ten (10) percent of the high bid, thereby commencing the eligible licensee's installment payment plan. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(3) Upon grant of the license, the Commission will notify each eligible licensee of the terms of its installment payment plan. Such plans will:

(i) impose interest based on the rate of U.S. Treasury obligations (with maturities closest to the duration of the license term) at the time of licensing;

(ii) allow installment payments for the full license term;

(iii) begin with interest-only payments for the first two years; and

(iv) amortize principal and interest over the remaining term of the license.

(4) A license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan.

(i) If an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default.

(ii) Upon default or in anticipation of default of one or more installment payments, a licensee may request that the Commission permit a three to six

month grace period, during which no installment payments need be made. In considering whether to grant a request for a grace period, the Commission may consider, among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy. If the Commission grants a request for a grace period, or otherwise approves a restructured payment schedule, interest will continue to accrue and will be amortized over the remaining term of the license.

(iii) Following expiration of any grace period without successful resumption of payment or upon denial of a grace period request, or upon default with no such request submitted, the license will automatically cancel and the Commission will initiate debt collection procedures pursuant to Part 1, Subpart O of the Commission's Rules.

(e) The Commission may award bidding credits (i.e., payment discounts) to eligible designated entities.

(1) Competitive bidding rules applicable to individual services will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits and other procedures.

(2) Any bidding credit for rural telephone companies will be available only for licenses in rural telephone company service areas and only if eligible rural telephone companies make an infrastructure build-out commitment beyond any standard performance requirement. The amount of the bidding credit for rural telephone companies will be based on the amount by which eligible applicants agree to expand or accelerate the build-out commitment. If a rural telephone company fails to meet an accelerated or expanded build-out commitment, it must make payment to the Commission within ninety (90) days of a penalty equal to the amount of the bidding credit. Grant of the license will be conditioned upon payment of this penalty if and when it becomes applicable.

(f) The Commission may offer designated entities a combination of the available preferences or additional preferences.

§ 1.2111 Assignment or transfer of control: unjust enrichment

(a) Reporting requirement. An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement

indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below market financing).

(b) Unjust enrichment payment: set-asides. As specified in this subsection, an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor pursuant to a set-aside for eligible designated entities under § 1.2110(c) of the Commission's Rules, or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of a comparable non-set-aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No Payment will be required if:

- (1) the license is transferred or assigned more than five years after its initial issuance; or
- (2) the proposed transferee or assignee is an eligible designated entity under § 1.2110(c) of the Commission's Rules, and so certifies.

(c) Unjust enrichment payment: installment financing. An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing installment financing available to designated entities under § 1.2110(d) of the Rules will be required to pay the full amount of the remaining principal balance as a condition of the license transfer. No payment will be required if the proposed transferee or assignee assumes the installment payment obligations of the transferor or assignor, and if the proposed transferee or assignee is itself qualified to obtain installment financing under § 1.2110(d) of the Rules, and so certifies.

(d) Unjust enrichment payment: bidding credits. An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing bidding credits available to eligible designated entities under § 1.2110(e) of the Rules, or who proposes to take any other action relating to ownership or control that will result in loss of

status as an eligible designated entity, must seek Commission approval and will be required to make an unjust enrichment payment (Payment) to the government by wire transfer or cashier's check before consent will be granted. The Payment will be the sum of the amount of the bidding credit plus interest at the rate applicable for installment financing in effect at the time the license was awarded. See § 1.2110(e). No payment will be required if:

- (1) the proposed transferee or assignee is an eligible designated entity under § 1.2110(e) of the Commission's Rules, and so certifies; or
- (2) the proposed transferor or assignor is a rural telephone company as defined in § 1.2110(b)(3) of the Rules, and the proposed transferee or assignee is also a rural telephone company and agrees to meet the same construction requirements as the transferor or assignor.

High Bid Acknowledgment Form

Federal Communications Commission
Auction No. ____

Bid Acknowledgment

Auction Lot No. _____

Bidder Number _____

FCC Account No. _____

The undersigned Bidder acknowledges and confirms the bid amount stated above. The Bidder certifies that he has thoroughly reviewed the auction documents, understands all of the provisions, and is willing to be bound all of the terms thereof.

BIDDER:

By: _____

Title: _____

BID DEPOSIT INFORMATION:

Check No. _____

_____ Check Amount \$ _____

_____ No check required